

ORIGINAL

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In re Applications of)	MM Docket No. 97-128
)	
Martin W. Hoffman,)	
Trustee-in-Bankruptcy for Astroline)	FCC File No. BRCT-881201LG
Communications Company Limited)	
Partnership)	
)	
For Renewal of License of Station)	
WHCT-TV, Hartford, Connecticut)	
)	
Shurberg Broadcasting of Hartford)	FCC File No. BPCT-831202KF
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	
TO: The Honorable John M. Frysiak		
Administrative Law Judge		

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OCT 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TRUSTEE/RAMIREZ/TIBS EXHIBIT 1

Testimony of Martin W. Hoffman

Respectfully submitted,

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20554
(202) 429-3350

MARTIN W. HOFFMAN, TRUSTEE-IN-BANKRUPTCY
FOR ASTROLINE COMMUNICATIONS COMPANY LIMITED
PARTNERSHIP

By: Peter D. O'Connell
His Counsel

FISHER WAYLAND COOPER
LEADER & ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006-1851
(202) 659-3494

RICHARD P. RAMIREZ

By: Kathryn R. Schmeltzer
Barry H. Gottfried
Colette M. Capretz
His Counsel

TWO IF BY SEA BROADCASTING CORPORATION

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 939-7900

By: Howard A. Topel
Its Counsel

Dated: September 9, 1998

TESTIMONY OF MARTIN W. HOFFMAN

1. My name is Martin W. Hoffman. I serve as Trustee in Bankruptcy for Astroline Communications Company Limited Partnership ("Astroline"). I was appointed as the interim trustee on April 9, 1991 by the Office of the United States Trustee (Case No. 88-21124RCK). Pursuant to 11 U.S.C. § 702(d), I became the permanent trustee on June 13, 1991, since creditors did not elect a trustee at the 11 U.S.C. § 341 meeting of creditors.

2. On October 31, 1988, an involuntary Chapter 7 Petition was filed against Astroline by certain creditors of the partnership. Astroline was a Massachusetts Limited Partnership which owned and operated Hartford-based television station WHCT-TV ("WHCT"), having a principal place of business at 18 Garden Street, Hartford, CT. Richard P. Ramirez was the managing general partner and Astroline Company (as well as its successor, Astroline Company, Inc.) was a limited partner (collectively, the "Limited Partner").

3. On December 1, 1988, the Astroline bankruptcy case was converted to a voluntary Chapter 11 proceeding. On April 9, 1991, the case was converted to a voluntary Chapter 7 proceeding, and thereafter I was appointed Trustee of the Chapter 7 estate.

4. Pursuant to 11 U.S.C. § 704, the primary duty of a Chapter 7 bankruptcy trustee is to "collect and reduce to money the property of the estate for which such trustee serves" for distribution to creditors. In the typical bankruptcy case, creditors receive a pro-rata distribution since there usually are not enough assets to pay all creditors in full.

FBI

Deposition

Docket No. _____
Presented by Trustee / Ramirez / TIBS
Exhibit No. 1

Federal Communications Commission

Received _____
Refused _____
7-23-98
7-23-98

5. Pursuant to 11 U.S.C. § 541, property of the Astroline bankruptcy estate includes WHCT's physical assets, the Federal Communications Commission ("FCC") license for WHCT and any claims and/or lawsuits that Astroline might have available to it.

6. Listed in the Debtor's petition as an asset was a "Potential Claim Against General and Limited Partners, Liabilities and Amount Undetermined." Upon investigating this matter, I was advised by the law firm of Paul, Hastings, Janofsky and Walker ("Paul, Hastings") (which represented the creditors who had filed the involuntary petition against Astroline) that a possible claim existed that the Limited Partner and its individual partners were liable as de facto general partners pursuant to 11 U.S.C. § 723. Under bankruptcy law and partnership law, a general partner is liable for all the debts of a partnership.

7. On or about April 24, 1991, I filed as Interim Trustee an application with the Bankruptcy Court to appoint Paul, Hastings as a special attorney for the Trustee to "investigate, evaluate and, if appropriate, prosecute actions against Astroline Company, Astroline Company, Inc., Herbert Sostek, Fred J. Boling, Richard H. Gibbs, Randall L. Gibbs and the estate of Joel Gibbs for a declaratory judgment that said individuals and entities were de facto general partners of the Debtor and therefore liable to the estate pursuant to Section 723 of the Bankruptcy Code." This application was granted by the Bankruptcy Court on April 30, 1991.

8. On or about November, 1992, Mr. Alan Shurberg ("Shurberg"), the principal of Shurberg Broadcasting of Hartford, met with me and advised that in his view the Astroline estate had a claim against the Limited Partner under § 19 of the Massachusetts Limited Partnership Act as a de facto general partner, and Shurberg urged me to pursue this claim. Shurberg was on file as a creditor of Astroline at this time. (I have subsequently filed an action in the Bankruptcy Court to have Shurberg's proof of claim disallowed.) On November 13, 1992 and November 16,

1992, Shurberg faxed several documents to me in support of his allegations. At one point, Shurberg offered to purchase the alleged claim against the Limited Partner in connection with his unsuccessful bid to purchase the WHCT assets and FCC license at an auction in the Bankruptcy Court (the court ultimately found that Two If By Sea Broadcasting ("TIBS") was the highest bidder in that auction).

9. Pursuant to a letter dated April 5, 1993 (attached as an Appendix), Shurberg cited my fiduciary duties and possible litigation against me as trustee in demanding that I file a complaint against the Limited Partner by Wednesday, April 7, 1993. He offered to provide a draft complaint to me for this purpose.

10. On or about April 19, 1993, I was advised by Paul, Hastings that the firm was unwilling to prosecute the aforesaid litigation without funding from its original clients and was unwilling to represent the Trustee on a contingency basis. Thereafter, the law firm of Day, Berry & Howard, Hartford, CT was appointed by the Bankruptcy Court as the Trustee's special counsel in regard to these matters. In the course of investigating Astroline, I had collected well over twenty boxes of documents and numerous transcripts of depositions taken during the Chapter 11 proceeding. Day, Berry & Howard advised me that, after a review of all of the available documents and transcripts of depositions, they believed a valid claim could be made against the Limited Partner. Based on the documents then on file, I calculated the amount of this claim to be approximately \$30-40 million.

11. Based upon the advice of counsel, the strong insistence of Shurberg, and my own investigations, I concluded that I had a fiduciary duty to maximize the potential distribution to creditors by filing a lawsuit against the Limited Partner and its general partners in the Bankruptcy

Court. This lawsuit was conducted by Day, Berry & Howard, although my associate and I did attend various depositions.

12. After a nine-day trial before the Bankruptcy Court, Judge Krechevsky ruled that, "despite the intense level of investigation undertaken by the Trustee of the Debtor's prepetition history, the Court would have to engage in conjecture and surmise to find any control of the Debtor's day-to-day operation of the Channel 18 television station" by the Limited Partner. The Court noted that I was justified in "questioning the status of Astroline Company as simply a limited partner of the Debtor." The Court said, however, that it "cannot find as a fact that Astroline Company ever did anything more than prepare the checks as directed by Ramirez or Rozanski and add to the Debtor's bank account those funds necessary to make good the issued checks." The Court held that the Limited Partner was not liable to the bankruptcy estate as a general partner.

13. I appealed this decision to the U.S. District Court and to United States Court of Appeals for the Second Circuit. Both appellate courts essentially affirmed Judge Krechevsky's decision.

14. With regard to the Limited Partner's current status in the bankruptcy case, on or about May 20, 1998, the Limited Partner filed an amendment to its proof of claim recharacterizing it as an unsecured claim of \$7,537,703.00. Prior to that date, the Limited Partner's claim was listed as a secured claim, and as such, said claim would not have been paid by the Trustee pursuant to 11 U.S.C. § 726. The proof of claim relates to two promissory notes from Astroline to the Limited Partner: (a) a \$4,000,000.00 Note dated December 1, 1987, and (b) a \$2,930,000.00 Note dated September 20, 1988.

15. On or about June 12, 1998, I filed a Complaint in the Bankruptcy proceeding against the Limited Partner seeking to subordinate its claim to those of other creditors. In this Complaint I alleged that (a) the Limited Partner is an "insider" of Astroline, (b) at least \$4,000,000.00 of the alleged debt was originally an equity contribution which was subsequently recharacterized as debt, and (c) Astroline was undercapitalized at the times the alleged debts of the Debtor to Limited Partner were incurred. I am relying upon the case of Summitt Coffee Co. v. Herby's Foods (In re Herby's Foods), 2 F.3d 128 (5th Cir. 1993) (if an insider makes loan to an undercapitalized corporation, a combination of undercapitalization and insider loans may allow the Bankruptcy Court to recharacterize the loan as capital contributions, or to equitably subordinate the loan to claims of other creditors), although I believe other cases support my position on different grounds..

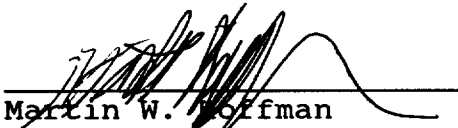
16. My Complaint is currently pending before the Bankruptcy Court. I anticipate that the Court will subordinate the Limited Partner's claim to other creditors and that, on this basis, no funds of the bankruptcy estate will be available to provide any payment to the Limited Partner based on the claims currently on file.

17. In addition to the claims of Shurberg and the Limited Partner, the bankruptcy estate has received claims from creditors in the approximate amount of \$30-40 million. The estate's resources are inadequate to pay those claims fully, and a denial by the FCC of the WHCT license renewal application (with a consequent inability to sell the station) would deprive the estate of a valuable resource from which payments to the creditors could otherwise be made.

DECLARATION

I, Martin W. Hoffman, have read the foregoing exhibit entitled "Testimony of Martin W. Hoffman" and I declare under penalty of perjury that it is true and accurate to the best of my knowledge and belief.

Executed this 4th day of September, 1998.


Martin W. Hoffman

Alan Shurberg
P.O. Box 370608
West Hartford, CT 06106
(202) 833-4190
FAX (202) 833-4190

April 5, 1993

BY HAND

Martin Hoffman, Trustee
Astroline Communications Company
Limited Partnership, Debtor
50 Columbus Blvd.
Hartford, CT 06106

Re: Two year deadline to file action pursuant to 11 U.S.C 108

Dear Atty. Hoffman:

Last Wednesday I was in court and spoke with Walter concerning certain statutory deadlines pursuant to Sections 108 and Section 546 of the Bankruptcy Code. I am deeply concerned that a deadline may be missed for the purpose of initiating possible fraud actions in the Astroline case. Walter took the position that as a general matter the two year deadline runs from the appointment of a full-time trustee, rather than two years from the order of relief.

While his analysis may be true for Section 546, the two year period is differently stated in Section 108:

[t]he trustee may commence such action only before the later of [] (2) two years after the order for relief.

Having performed an extensive amount of research in this case, including conducting discovery, I believe that it is possible to win fraud convictions against one or more Astroline entities and/or its owners or officers for running the debtor as an alter ego or other fraudulent conduct.

According to my calculations, the deadline for the trustee to file such an action may be this Wednesday. Of course if the statutes explicitly allow for an action to be filed later than that time then this deadline may not apply. Recovery under Sections 540 -552 of the Code is severely limited, in many cases one year back from the initial time of filing, while other statutes face no such limitations.

An action under the RICO statutes against the general partners in-fact of the debtor,

including 18 U.S.C. 1964 is in the best interests of the creditors and has the highest chance for full recovery for all creditors. RICO specifically provides for triple damages, and does not have the same limitations as the bankruptcy code. Action under Connecticut fraud statutes may similarly provide greater recovery than from the bankruptcy code alone.

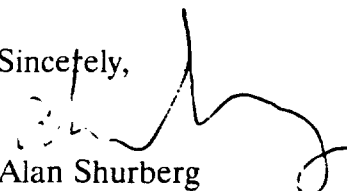
To the extent that the trustee does not retrieve the full amount owed to the creditors, and to the extent that the bankruptcy court, or other court may later find fraud concerning the debtor and/or related entities, it would create an unfortunate situation where additional litigation may be necessary because of trustee inaction.

Section 108 does not provide the same statute of limitations on creditors as it does on the trustee. Therefore while I may ultimately have to litigate the fraud claim, the estate as a whole may not be able to share in any judgment, simply because the trustee's statutory deadline has passed.

Although you have a statutory duty on your own to investigate the financial affairs of the debtor, if it would lead to your filing a fraud action against either Mr. Boling and/or some Astroline entity (Astroline Company, Astroline Communications Company, Astroline Connecticut, Inc., Astroline Company Inc, Astroline Corporation), I would provide you with copies of the discovery materials which I have obtained so far. It is a matter of record that you hired Mr. McGeeney as special counsel to investigate the debtor. According to Walter, he was fired for not performing his duties. Nonetheless the statutory duties are ultimately your responsibility. To the extent that you found it necessary to hire special counsel, and that for whatever reason had to let him go, possibly without first fully investigating the financial affairs of the debtor, or finishing the task he started, it may create a breach of the trustee's obligations.

It would be in the best interests of everyone other than Rich Ramirez, Mr. Boling, Mr. Sostek, and the other Astroline folks to get this matter taken care of and timely file fraud actions by Wednesday, rather than going through additional litigation against the trustee. I am writing in an effort to persuade you make sure that all reasonable avenues of recovering all money owed from the actual owner/operators of the debtor's estate are pursued, and would greatly prefer that the RICO and/or state claims be timely filed, rather than side show litigation. One way or another the fraud matter will be litigated. It serves the creditor's best interest that recovery from that or any other fraud litigation may not be possible because of actions, or inaction, purposely taken by the trustee. I can provide you with a draft complaint which I have prepared for my own exclusive use in filing if you wish.

Sincerely,


Alan Shurberg

cc: James Berman, Creditor's Committee
Honor Heath
John McGeeney